Supreme Court, U.S.
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1993 FEB 8 1994
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No. _____

In The

Supreme Court of the United States

OCTOBER TERM, 1993

WILLIAM AND MARIE PURIFICATO,
JOHN AND CATHERINE PURIFICATO,

Petitioners,

v.

COMMISSIONER OF THE
INTERNAL REVENUE SERVICE,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

PETITION FOR A WRIT OF CERTIORARI

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February 8, 1994

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59 pp

QUESTION PRESENTED

Whether evidence of a spouse's extraordinarily oppressive living conditions must be considered in assessing his or her claim to innocent spouse status under Internal Revenue Code § 6013(e), which provides, in part, for relief from a joint tax liability where "taking into account all the facts and circumstances, it is inequitable to hold" the spouse liable.

LIST OF ALL PARTIES

The caption in this case contains all of the parties: Petitioners William and Marie Purificato, John and Catherine Purificato, and Respondent, the Commissioner of the Internal Revenue Service.

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COMMISSIONER OF THE
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On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

PETITION FOR A WRIT OF CERTIORARI

William and Marie Purificato, and John and Catherine Purificato, respectfully petition for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Third Circuit.

OPINIONS BELOW

The opinion of the United States Tax Court (1a-23a) is reported at 64 T.C.M. 942 (1992). The opinion of the

United States Court of Appeals for the Third Circuit (24a-41a) is reported at 9 F.3d 290 (3d Cir. 1993).

JURISDICTION

The United States Court of Appeals for the Third Circuit entered its judgment on November 10, 1993. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

Section 6013(e)(1)(D) of the Internal Revenue Code, 26 U.S.C. § 6013(e)(1)(D), provides, in relevant part, that a spouse shall be relieved of liability for tax, interest, and penalties, if, "taking into account *all the facts and circumstances*, it is inequitable to hold" the spouse liable (emphasis added).

STATEMENT OF THE CASE

This case arises from Notices of Deficiency in personal income tax issued by the Respondent, the Commissioner of the Internal Revenue Service (the "Commissioner"), to William and Marie Purificato, husband and wife, and John and Catherine Purificato, husband and wife, for the tax years 1981-1983. These deficiencies were based on omitted income from petitioner John Purificato's and William Purificato's "S" corporation, Apollo Caterers.

The parties stipulated that petitioner-husbands were each liable for tax, penalties, and interest in excess of $1,000,000. The issue of the innocent spouse status of petitioner-wives was tried in consolidated cases before the United States Tax Court (Ruwe, J.). The Tax Court had jurisdiction over the action by virtue of 26 U.S.C. § 7442.

The only issues for trial were whether under 26 U.S.C. § 6013(e)(1)(C), petitioner-wives knew or should have known of the omitted income, and whether under 26 U.S.C. § 6013(e)(1)(D), considering "all the facts and circumstances," it would be inequitable to hold them liable. In order to establish that petitioner-wives did not know or have reason to know of the unreported income, petitioners demonstrated that the wives were uneducated, had no involvement with the business, and led consistently meager lives. In order to establish that under "all the facts and circumstances" it would be inequitable to hold the petitioner-wives liable, petitioners introduced, among other things, extensive evidence of the extraordinarily difficult living conditions endured by petitioner-wives during the years in issue.

The circumstances facing petitioner-wives and their immediate family members during the years in issue can be summarized as follows. William and Marie Purificato's eldest son William Jr. was heavily involved with drugs. He had numerous contacts with the criminal justice system, including a charge for rape, and convictions for handgun possession, being an escaped prisoner, failing to disperse, disorderly conduct, and assault. Marie Purificato was involved in altercations with her son and her son's assailants, and had William committed to juvenile detention centers and drug rehabilitation centers. She

also accompanied him each and every time he went to court. Her son William's existence was so terrible that by 1983, he literally lived with a girl in a box with a beach chair, a blanket, and his drug needles in the empty lot next to the Purificato's house.

Marie Purificato's other son Michael was also on drugs, including liquid valium. Likewise, he was no stranger to law enforcement. He had been arrested for burglary, and convicted for criminal trespass, theft, and receiving stolen property. He was also institutionalized at a drug rehabilitation center.

Marie Purificato's daughter Denise lived at home, was married, and had an abusive husband. Mrs. Purificato had to attack him with a baseball bat in order to get him out of the house. Mrs. Purificato also obtained a restraining order to protect herself and her daughter from her son-in-law.

Marie Purificato also had to contend with the problems of her husband, her parents, and her in-laws. William Purificato was a severe alcoholic who had been previously hospitalized twice where he was diagnosed as suffering from alcoholic hepatitis and laennec's cirrhosis of the liver. He also physically abused his wife and the children on a regular basis, and would go into convulsions, which forced Mrs. Purificato to leave with the children several times and to finally file for divorce. They eventually reconciled.

Marie Purificato's mother was admitted to the hospital where she was diagnosed as a diabetic, had her leg amputated, had urinary tract infections, and had a colostomy. She died on March 13, 1984.

Her mother-in-law suffered from high blood pressure and severe depression. She lived across the street, and Marie Purificato prepared dinner for her each night. Mrs. Purificato also drove her to doctor's appointments nearly sixty times during the years in issue.

Catherine Purificato likewise had a son John who was on drugs, including angel dust. He was suicidal and he threatened the lives of his grandmother and girlfriend. He also had numerous contacts with the criminal justice system, including arrests and convictions for possessing a controlled substance, failing to disperse, theft, and receiving stolen property. He was institutionalized and subsequently under out-patient care, with which Mrs. Purificato was involved.

Catherine Purificato's father was diagnosed as having cancer, and he died during the years in issue. After his death, her mother had strokes, and required Mrs. Purificato's daily care.

On September 29, 1992, Judge Ruwe entered his Memorandum Findings of Fact and Opinion. (1a-23a). Judge Ruwe concluded that both Marie Purificato and Catherine Purificato were not entitled to relief as innocent spouses. The Tax Court never decided whether Marie and Catherine Purificato knew or should have known of any understatement. (23a). Rather, the Court held that petitioner-wives did not qualify for innocent spouse relief because they failed to meet their burden of proving that it would be inequitable to hold them liable for the deficiencies. 26 U.S.C. § 6013(e)(1)(D). The Court so held because, in the Court's view, they received a "significant benefit" from omitted income, and did not fully disclose their assets. (20a, 22a-23a).

The Tax Court reached this conclusion without giving consideration to "all the facts and circumstances" as required by the statute. 26 U.S.C. § 6013(e)(1)(D). Specifically, the Tax Court ignored the wives' family and other circumstances. Indeed, the Tax Court specifically stated that it believed that evidence of family tragedies was admitted *only* to show the wives' lack of knowledge, an issue the Court never reached. The Court stated:

> Petitioners introduced a great deal of evidence at trial that both Marie and Catherine Purificato experienced extensive family problems during the years in issue. *This evidence was intended to demonstrate that Marie and Catherine Purificato did not know, or have reason to know, of the understatements of income tax.* Because we hold that petitioners have not proven that it would be inequitable to hold Marie and Catherine Purificato jointly and severally liable with their husbands for the taxes and additions to tax in issue, we will not address whether they knew, or had reason to know, of the understatements.

(23a) (emphasis added). The Court focused instead on the existence of joint assets held by petitioner-wives and their husbands as the basis to find them unqualified for relief.

The Court entered its decisions on September 30, 1992. Notice of Appeal to the United States Court of Appeals for the Third Circuit was filed on December 2, 1992. The United States Court of Appeals for the Third Circuit had appellate jurisdiction to review the final Orders of the United States Tax Court, pursuant to 26 U.S.C. § 7482.

The Third Circuit (Becker, Alito, & Roth, J.J.) affirmed the decision of the Tax Court. In Part IV of its decision, the Third Circuit rejected petitioners' argument that the Tax Court had erred by ignoring evidence of the personal tragedies in the § 6013(e)(1)(D) equation. (34a-39a). The Third Circuit stated, in discussing the "all facts and circumstances" language in the statute:

> We note that this language does not require that weight be given to every personal fact and circumstance that a taxpayer chooses to adduce. Rather, the statute requires a determination whether, in light of all the facts and circumstances, "it is inequitable to hold the other spouse liable for the deficiency." *Accordingly, § 6013(e)(1)(D) expressly requires that weight be given to only those facts and circumstances that have a rational bearing on a putatively "innocent spouse's" liability for the deficiency. By clear implication, the statutory language permits all other facts and circumstances to be disregarded.*

(35a) (emphasis added). In reaching this interpretation of the statute, the Third Circuit was motivated by its view of the legislative history (35a-36a), and by the fact that inquiry into such other issues would place an additional burden on the Tax Court (37a-38a).

REASONS FOR GRANTING THE WRIT

1. This Court has not considered the circumstances under which a spouse may qualify for relief from a joint tax liability under the innocent spouse provisions of Internal Revenue Code § 6013(e). Until now, no court has

ever placed a restriction on the factors to be considered in applying the "all facts and circumstances" provision of the equity prong of this statute. Now taxpayers in Pennsylvania, New Jersey and Delaware, who seek to invoke the equitable relief afforded by § 6013(e), will be treated differently and more harshly than those seeking similar relief throughout the balance of the United States. Since disparate treatment of similarly situated taxpayers is contrary to the fair enforcement of the Internal Revenue Code, guidance by this Court is necessary.

The factors to be considered in determining whether a person qualifies for innocent spouse relief are important to both the government and the taxpayer. The large federal deficit and the billions of dollars in uncollected taxes make the ability of the Internal Revenue Service to collect revenue critical to the nation's economy. Consequently, any provision providing for relief from tax liability is important. Likewise, increasing tax rates resulting in larger joint liability for married couples combined with a significant rate of divorce and separation enlarges the occasions where the relief provided by the statute will be sought. Finally, where equity is the basis for relief, the manner by which the relief is dispensed by both the government and the courts is important to the way taxpayers will view the fairness of the system and the administration of the tax law.

Accordingly, this is an important issue to millions of individuals and not just the parties to this litigation.

2. The Third Circuit and the Tax Court ignored the plain language of the statute. Congress has directed the courts to take into account "all the facts and circumstances" in determining whether it is inequitable to hold a spouse liable. 26 U.S.C. § 6013(e)(1)(D). Nothing in the language of the statute supports the lower courts' disregarding evidence of the petitioner-wives' personal circumstances.

The Tax Court specifically stated that it believed that the *only* purpose for the evidence of the family tragedies was to establish petitioner-wives' lack of knowledge. (23a). Nothing in the record supported this compartmentalization of the evidence. Rather, petitioners introduced extensive evidence of the wives' personal circumstances both to establish a lack of knowledge *and* to establish that it would be inequitable to hold them liable. The Tax Court committed error by ignoring this body of evidence and basing its decision solely upon the perceived significant benefit.

Similarly, the Third Circuit erred in holding that the only facts and circumstances to be considered are those bearing on a putative innocent spouse's economic ability to pay the tax liability. The Third Circuit's references to the legislative history do not support this conclusion. While the legislative history notes that whether the spouse is deserted, divorced or separated is relevant to the equities, it does not purport in any way to limit the equity equation to such factors.[1] *See* S. Rep. No. 1537, 91st

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[1] In *Mysse v. Commissioner*, 57 T.C. 680 (1972), the Tax Court stated:

> We find nothing in the section, however, to indicate that its relief was to be limited to spouses who are

Cong., 2d Sess., *reprinted in*, 1970 U.S. Code Cong. & Admin. News 6089, 6092. Nor does the Third Circuit's concern for judicial economy support its position. Almost always, evidence of the lifestyle of a putative "innocent spouse" will be presented to a court considering the "innocent" status of the spouse.[2]

Rather, the legislative history is consistent with Petitioners' reading of the statute, namely, that Congress meant what it said when it wrote that "all the facts and circumstances" should be considered. In 1971, Congress enacted § 6013(e) of the Internal Revenue Code. As originally enacted, one seeking to demonstrate innocent spouse status had to satisfy the following "equity" prong of § 6013(e):

> (C) *taking into account whether or not the other spouse significantly benefitted directly or indirectly*

> victims of broken marriages. Indeed, the committee report . . . indicates that whether the innocent spouse has been separated or divorced is only *one* of the factors to be considered in determining whether it is inequitable to hold her liable for the deficiencies.

Id. at 700 (emphasis added) (citing S. Rep. No. 1537, 91st Cong., 2d Sess., *reprinted in*, 1970 U.S. Code Cong. & Admin. News 6089). *See also Walker v. Commissioner*, 50 T.C.M. 105, 111 (1985) (wife granted innocent spouse relief even though still married to husband); *Quint v. Commissioner*, 49 T.C.M. 1465, 1471 (1985) (same).

[2] In this case, petitioners introduced evidence of the wives' personal tragedies both to establish a lack of knowledge *and* to establish that it would be inequitable to hold the wives liable.

> *from the items omitted from gross income* and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax. . . .

26 U.S.C. § 6013(e)(1)(C) (emphasis added). In discussing the intent of this provision, the Senate Finance Committee stated, in pertinent part:

> A mere finding that the spouse "benefitted" from the items omitted from gross income will *not be sufficient* however, to prevent that spouse from obtaining relief from liability for the tax. For the spouse to be prevented from obtaining relief there also must be a finding that the benefit was "significant" *and* that "taking into account *all* other facts and circumstances," it is not "inequitable to hold the . . . spouse liable for the deficiency in tax. . . . "

S. Rep. No. 1537, 91st Cong., 2d Sess., *reprinted in*, 1970 U.S. Code Cong. & Admin. News 6089, 6092 (emphasis added).[3]

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[3] Numerous courts have afforded innocent spouse relief even though the spouse had "significantly" benefitted. *See, e.g., Busse v. United States*, 542 F.2d 421, 426-27 (7th Cir. 1976) (summary judgment in favor of government reversed even though wife received property through divorce and settlement with husband); *Sanders v. United States*, 509 F.2d 162, 170, 171 n.16 (5th Cir. 1975) (relief afforded even though wife received, among other things, the proceeds of an insurance policy that was increased from $50,000 to $145,000 during period of omitted income); *Dakil v. United States*, 496 F.2d 431, 433 (10th Cir. 1974) (insurance proceeds to wife, even though a significant benefit, did not defeat innocent spouse status, where amounts were to be used for ordinary support); *Terzian v. Commissioner*, 72 T.C. 1164, 1172-73 (1979) (husband transferred $155,000 to

By virtue of the Tax Reform Act of 1984, Pub. L. No. 98-369, Congress amended § 6013(e) by removing the specific reference to significant benefit. The purpose for the amendment was to "liberalize[] the innocent spouse joint return relief provision by *expanding* the circumstances in which the relief may be granted." H.R. Rep. No. 432, 98th Cong., 2d Sess., *reprinted in*, 1984 U.S. Code Cong. & Admin. News 697, 1143 (emphasis added). Congress intended innocent spouse relief to be liberally awarded to avoid a perceived injustice. *Sanders v. United States*, 509 F.2d 162, 166-67 (5th Cir. 1975). As a result, courts should not hinder that praiseworthy intent by giving the statute an unduly narrow or restrictive reading. *Id.*

In this context it is inconceivable that a court could properly conclude that the evidence presented concerning the personal living circumstances of these wives was not relevant when applying an equity standard. A fair reading of the legislative history, the liberalizing change in the statutory language, and the language of the statute itself, leads one to conclude that Congress believed that evidence of abusive, alcoholic, gambling husbands who constructively deserted their wives leaving them to deal with drug ravaged families and dying parents is the type of evidence relevant to an equitable relief provision.

Although the lower courts correctly noted that whether a spouse significantly benefitted remains a factor to be considered, the lower courts erred by focusing

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wife in part from omitted income; court examined entire record and concluded that amount transferred was ordinary support).

solely on benefit and disregarding the other evidence presented including the hardships faced by the wives during the years in issue. Clearly, an abused wife is entitled to equity. "Even a tax collector should have some heart." *Dakil v. United States*, 496 F.2d 431, 433 (10th Cir. 1974).

CONCLUSION

Petitioners respectfully request that this Court grant the Writ of Certiorari.

Respectfully submitted,

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February 8, 1994

T.C. Memo. 1992-580

UNITED STATES TAX COURT

WILLIAM PURIFICATO AND MARIE PURIFICATO,
Petitioners *v.*
COMMISSIONER OF INTERNAL REVENUE,
Respondent

JOHN PURIFICATO AND CATHERINE PURIFICATO,
Petitioners *v.*
COMMISSIONER OF INTERNAL REVENUE,
Respondent

Docket Nos. 40369-86, 40447-86.[1] Filed September 29, 1992.

Thomas W. Ostrander and *Joshua Sarner,* for petitioners.

John E. Becker, Jr., for respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION

RUWE, *Judge:* Respondent determined deficiencies and additions to tax in petitioners' Federal income taxes as follows:

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[1] This Court granted petitioners' motion to consolidate the case at docket No. 40369-86 with the case at docket No. 40447-86 for purposes of trial, briefing, and opinion.

William Purificato and Marie Purificato
docket No. 40369-86

Year	Deficiency	Additions to Tax		
		Sec. 6653(a)(1)	Sec. 6653(a)(2)	Sec. 6661
1981	$197,422	$9,872	50 percent of the interest due on $197,422	-
1982	156,741	7,837	50 percent of the interest due on $156,741	$15,674
1983	166,043	8,302	50 percent of the interest due on $166,043	16,604

John Purificato and Catherine Purificato
docket No. 40447-86

Year	Deficiency	Additions to Tax		
		Sec. 6653(a)(1)	Sec. 6653(a)(2)	Sec. 6661
1981	$207,542	$10,377	50 percent of the interest due on $207,542	-
1982	164,659	8,233	50 percent of the interest due on $164,659	$16,466
1983	178,965	8,948	50 percent of the interest due on $178,965	17,897

The sole issue for decision is whether petitioners Marie and Catherine Purificato are entitled to relief from liability for deficiencies in Federal income tax and additions to tax under the so-called innocent spouse provisions of section 6013(e).[2]

FINDINGS OF FACT

Some of the facts have been stipulated and are so found. The stipulation of facts and attached exhibits are incorporated herein by this reference. All petitioners resided in Philadelphia, Pennsylvania, at the time they filed their petitions.

Petitioners William and Marie Purificato are husband and wife, as are petitioners John and Catherine Purificato. William and John Purificato are brothers. The deficiencies determined by respondent arise from unreported income of Apollo Caterers, Inc., an S corporation owned by William and John Purificato. Apollo Caterers, Inc. (Apollo), operated lunch trucks that served various businesses and factories in the Philadelphia area. Respondent determined that Apollo had unreported income for taxable years 1981, 1982, and 1983 in the amounts of $655,620, $668,064, and $731,254, respectively. Respondent issued notices of deficiency allocating this unreported income to William and Marie Purificato, and to John and Catherine Purificato, based on each brother's

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[2] Unless otherwise indicated, all section references are to the Internal Revenue Code, as amended and in effect for the years in issue, and all Rule references are to the Tax Court Rules of Practice and Procedure.

percentage of ownership in Apollo. William Purificato owned 49 percent of the stock of the corporation, and John Purificato owned 51 percent.

Petitioners dispute respondent's determinations. However, for purposes of settlement, the parties have stipulated that the amounts of the deficiencies and additions to tax are as follows:

William Purificato and Marie Purificato
docket No. 40369-86

Year	Deficiency	Additions to Tax		
		Sec. 6653(a)(1)	Sec. 6653(a)(2)	Sec. 6661
1981	$95,459	$4,773	50 percent of the interest due on $95,459	-
1982	81,398	4,070	50 percent of the interest due on $81,398	$16,280
1983	83,310	4,166	50 percent of the interest due on $83,310	16,662

John Purificato and Catherine Purificato
docket No. 40447-86

Year	Deficiency	Additions to Tax		
		Sec. 6653(a)(1)	Sec. 6653(a)(2)	Sec. 6661
1981	$101,191	$5,060	50 percent of the interest due on $101,191	-
1982	86,240	4,312	50 percent of the interest due on $86,240	$17,248
1983	92,855	4,643	50 percent of the interest due on $92,855	18,571

Marie Purificato

At the time of trial, Marie Purificato was 52 years old. She has been married to William Purificato since 1961. She has a 10th-grade education and generally did not work outside the home. Marie was not involved with the operation of Apollo during the years in issue.

Marie and her husband lived in a three-bedroom row house, held in Marie's name, which they purchased in 1968 for $9,900. In addition to their personal residence, William and Marie owned two other residential properties, one on Weymouth Street in Philadelphia, where Marie's mother-in-law lived, and one on Iris Road in Millville, New Jersey, where Marie's mother lived. The Weymouth Street property was a small two-bedroom home that they purchased in 1972 for $6,000. The Millville property was a three-bedroom bungalow that they purchased in 1976 for $5,000.

Marie Purificato was responsible for the household finances during the years in issue. She wrote checks to pay the mortgage, automobile loans, utilities, property taxes, pharmacy bills, and insurance. She testified that she spent approximately $75 a week on groceries. Some of the expenditures made by Marie and her husband are summarized in the schedules below:

1981

Mortgage (VNB)	$ 1,411.96
Taxes:	
City of Philadelphia	197.28
IRS	83.00
Pennsylvania	65.00
Commercial Township	228.86

Utilities:	
Atlantic Electric	236.41
Philadelphia Electric	919.55
Philadelphia Gas	787.93
Insurance:	
Homeowners	37.71
Auto	545.43
Life	215.50
Car payments (GM)	2,979.72
Telephone:	
Pennsylvania Bell	266.13
New Jersey Bell	156.47
Rent to Mattson	2,220.00
Attorney's fees	2,137.00
Classic T-Bird Club	28.00
Eyeglasses	17.41
Laurel Lake Assoc.	110.00
Pa. Transportation Dept.	78.50
Miscellaneous	91.86
Food	3,900.00
Total	$16,713.72

1982

Mortgage (VNB)	$ 1,470.60
Taxes:	
City of Philadelphia	221.14
IRS	745.62
Pennsylvania	150.00
Commercial Township	521.60
Utilities:	
Atlantic Electric	227.28
Philadelphia Electric	977.63
Philadelphia Gas	1,043.21
Insurance:	
Homeowners	74.14
Auto	1,558.00

Fire	4.00
Life	517.20
Car payments (GM)	2,979.85
Telephone:	
Pennsylvania Bell	434.38
New Jersey Bell	94.84
Rent to Mattson	2,220.00
Attorney's fees	2,500.00
Classic T-Bird Club	6.00
Eyeglasses	15.91
Laurel Lake Assoc.	110.00
Pa. Transportation Dept.	48.00
Miscellaneous	996.70
Food	3,900.00
Sun Electric Corp.	560.28
U.S. savings bonds	600.00
Total	$21,976.38

1983

Mortgage (VNB)	$ 1,327.15
Taxes:	
City of Philadelphia	372.77
IRS	240.00
Pennsylvania	303.00
Commercial Township	600.05
Utilities:	
Atlantic Electric	471.57
Philadelphia Electric	974.23
Philadelphia Gas	934.23
Insurance:	
Homeowners	40.60
Auto	2,678.75
Life	948.20
Medical	910.08
Other	153.16
Unreimbursed medical	380.45

Car payments:	
GM	2,979.72
Ford	3,776.16
Telephone:	
Pennsylvania Bell	336.91
New Jersey Bell	138.56
Rent to Mattson	2,035.00
Attorney's fees	194.00
Classic T-Bird Club	152.00
Laurel Lake Assoc.	120.00
Pa. Transportation Dept.	121.00
Miscellaneous	281.44
Food	3,900.00
U.S. savings bonds	600.00
Total	$24,969.03

William and Marie claimed exemptions for three dependent children on their 1981 tax return. On their 1982 and 1983 tax returns, they claimed exemptions for two dependent children and William's mother.

During the years in issue, Marie and William owned five automobiles: A 1978 Lincoln Mark V, a Chrysler Cordoba, a Chevrolet Blazer, a used Cadillac of unknown vintage, and a 1983 Lincoln Mark VI. The 1983 Lincoln was purchased in 1983 for $27,662.15. William Purificato received credit of $5,858 on the trade-in of their 1978 Lincoln, made a cash downpayment of $4,243, and financed $17,957 of the remaining purchase price.

In response to respondent's interrogatories, William and Marie supplied the following information regarding their bank accounts and investments. In 1981, they acquired five certificates of deposit (CD's), four in the amount of $10,000, and one with a balance of $10,092.83. Three of the CD's acquired in 1981, totaling $30,000, were

closed in 1982. In 1982, they acquired another $10,000 CD and $40,320 was deposited in their joint savings account. The CD was closed in 1982 and the savings account was apparently closed in 1983. William also apparently acquired an additional CD (account No. 241283739) of unknown amount in 1982. During 1983, $73,452 was deposited in their joint "Gold Edge" bank account. William also acquired a $10,000 CD in 1983. The CD purchased in 1983 was apparently closed out in that same year. With the exception of the CD of unknown amount acquired in 1982, and the $10,000 CD acquired in 1983, each of the above accounts was in the name of both William and Marie Purificato.

William and Marie Purificato reported adjusted gross income for taxable years 1981, 1982, and 1983 in the amounts of $18,670, $19,838, and $14,694, respectively. These returns reflect interest income for the years 1981, 1982, and 1983 in the respective amounts of $6,820, $7,642, and $3,436.[3] George Schrader, petitioners' accountant, prepared William and Marie Purificato's individual income tax returns as well as Apollo's returns for the years in issue and for all years since 1970. The extent of Marie Purificato's involvement in the preparation of the returns was to save any papers that said "Tax Information" until Mr. Schrader called to say she should send such information to Apollo.

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[3] On their 1978, 1979, and 1980 tax returns, William and Marie reported interest income of $504, $1,048, and $2,970, respectively. Their reported adjusted gross income for those years was $3,504, $10,548, and $15,470, respectively.

After Mr. Schrader prepared their individual returns, he mailed them to William and Marie's home with instructions to sign at the "X" and to mail them to the Internal Revenue Service. Upon receipt of the tax returns, Marie would look for the "X" and sign there. Marie did not review any of the figures on the tax returns before signing them, nor did she discuss them with her husband.

During the years in issue, Marie experienced numerous problems with her family. Her husband, William, had a severe drinking problem and gambled. Their son, William, who was 18 years old in 1981, had a drug abuse problem and was the subject of several criminal proceedings which included charges of rape, escape from custody, possession of a handgun, and assault. Marie had similar problems with her son, Michael, who had quit school and was using drugs at age 13. Michael was charged with delinquency in 1982, and charged and convicted of theft and receiving stolen property in 1983. Their daughter, Denise, returned home to escape an abusive husband. In addition, Marie's mother and mother-in-law were in poor health during the years in issue.

Catherine Purificato

At the time of trial, Catherine Purificato was 50 years old. She has been married to John Purificato since she was 17. Catherine was not involved in the operation of Apollo during the years in issue, except for a few hours a week in 1983 that she worked cleaning the kitchen.

John and Catherine lived in a three-bedroom row house, which they had purchased in 1961 for $11,990.

They financed the purchase of the house, except for a downpayment of $500. During the years in issue, Catherine drove a 1980 Buick, which was purchased in 1980 for $11,000. John and Catherine traded a previous car in on the Buick and financed part of the purchase over 2 years. Title to the car is in both John and Catherine Purificato's names. Catherine Purificato also drove a 1980 Ford Granada in 1983. That car was titled in her mother's name.

Like Marie, Catherine Purificato was responsible for the family finances. She wrote checks for the bills to which she signed her husband's name, since the bills were in his name. She also made deposits to their bank accounts.

In response to respondent's interrogatories, John and Catherine supplied the following information regarding their bank accounts and investments. In 1981, they had two bank accounts and owned two CD's and two insurance company accounts of undisclosed amounts. In 1982, they acquired five CD's of undisclosed amounts. In 1983, John and Catherine purchased 500 shares of preferred stock of Public Service Gas & Electric Co. on the following dates, in the following amounts:

4/27/83 100 shares for $6,648.54
4/27/83 100 shares for $6,672.54
4/28/83 50 shares for $3,357.25
4/29/83 100 shares for $6,673.54
5/10/83 100 shares for $6,773.54
5/11/83 50 shares for $3,407.74

John and Catherine Purificato filed joint returns for taxable years 1981, 1982, and 1983 reporting adjusted

gross income of $23,880, $25,064, and $27,396, respectively. These returns reflect interest income for the years 1981, 1982, and 1983 in the respective amounts of $1,548, $5,175, and $3,698. These returns also reflect dividend income of $2,925 for 1983 and no dividend income for 1981 and 1982.[4] John and Catherine claimed exemptions for two dependent children on their 1981 return and for one dependent child on their 1982 and 1983 returns. The returns were prepared by Mr. Schrader and mailed to John, who would place the forms in front of Catherine for her to sign. Catherine Purificato did not review the returns when she signed them. She did not discuss the returns with Mr. Schrader or her husband, nor did she supply information for their preparation.

Catherine experienced substantial family problems during the years in issue. Her son, John, Jr., was involved in drug use and was arrested several times during the years in issue for possessing a controlled substance and driving under the influence of a controlled substance. Catherine's father was suffering from cancer during the years in issue. After her father's death in 1982, the health of Catherine's mother deteriorated.

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[4] On their 1978, 1979, and 1980 tax returns, John and Catherine reported interest income of $368, $675, and $1,979, respectively. Their reported adjusted gross income for those years was $18,131, $21,545, and $25,071, respectively.

OPINION

The sole issue to be decided is whether Marie and Catherine Purificato are entitled to innocent spouse treatment under section 6013(e). Under section 6013(d)(3), a husband and wife who file a joint return are jointly and severally liable for the tax due. However, an "innocent" spouse is relieved of liability if he or she proves that: (1) A joint return has been made for a taxable year; (2) there is a substantial understatement of tax on the return attributable to grossly erroneous items of the other spouse; (3) in signing the return, he or she did not know, and had no reason to know, of the substantial understatement; and (4) after consideration of all the facts and circumstances, it would be inequitable to hold him or her liable for the deficiency in income tax attributable to such substantial understatement. Sec. 6013(e)(1);[5] *Purcell v. Commissioner*, 86 T.C. 228, 235 (1986), affd. 826 F.2d 470 (6th Cir. 1987). In order to qualify for relief, petitioners must prove that each of the four requirements of section 6013(e) has been satisfied. Rule 142(a); *Purcell v. Commissioner*, 826 F.2d at 473; *Flynn v. Commissioner*, 93 T.C. 355, 359 (1989); *Sonnenborn v. Commissioner*, 57 T.C. 373, 381-383 (1971).

Respondent does not dispute that the first two elements are satisfied. Respondent contends, however, that both Marie and Catherine Purificato knew or had reason to know of the understatements. Respondent also contends that both Marie and Catherine significantly benefited from the omissions on the returns and that it would

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[5] The Deficit Reduction Act of 1984, Pub. L. 98-369, sec. 424(a), 98 Stat. 801-802, amended sec. 6013(e) retroactively to all years to which the Internal Revenue Code of 1954 applies.

not be inequitable to hold them liable for the resulting deficiencies and additions to tax. We will address the last element first.

Whether it is inequitable to hold a spouse liable is to be determined on the basis of all the facts and circumstances. Sec. 6013(e)(1)(D); sec. 1.6013-5(b), Income Tax Regs. Although section 6013(e), as amended, no longer specifically requires us to determine whether a spouse significantly benefited from the erroneous items, this factor is still to be taken into account in determining whether it is inequitable to hold a spouse liable. *Estate of Krock v. Commissioner*, 93 T.C. 672, 678 (1989); see *Day v. Commissioner*, T.C. Memo. 1991-140. Marie and Catherine bear the burden of proving that they did not significantly benefit from the erroneous items. *Estate of Krock v. Commissioner, supra.*

Petitioners contend that there is no evidence that Marie or Catherine Purificato received any benefit from their husbands' omitted income. They argue that William and John Purificato never provided money or property to them other than the minimal amount necessary for ordinary support.

Normal support is not a "significant benefit" for purposes of determining whether denial of innocent spouse relief would be inequitable under section 6013(e)(1)(D). *Flynn v. Commissioner, supra* at 367; *Purcell v. Commissioner*, 86 T.C. at 242; *Terzian v. Commissioner*, 72 T.C. 1164, 1172 (1979); sec. 1.6013-5(b), Income Tax Regs. Normal support is to be measured by the circumstances of the parties. *Sanders v. United States*, 509 F.2d 162, 168 (5th Cir. 1975); *Flynn v. Commissioner, supra* at 367.

"Unusual support or transfers of property to the spouse would, however, constitute 'benefit' and should be taken into consideration". *Estate of Krock v. Commissioner, supra* at 679 (quoting S. Rept. 91-1537 (1970), 1971-1 C.B. 606, 607-608). Petitioners attempted to establish that both Marie and Catherine, if not their husbands, led very austere lifestyles. Both wives testified that during the entire time they were married, they never took a vacation, attended a movie, or went out to dinner with their husbands. They also both testified that during the years in issue, and at the time of trial, they owned no furs and little jewelry.[6]

William and Marie's checking account records are not inconsistent with a simple lifestyle.[7] On the other hand, there is evidence indicating that they were accumulating substantial assets during the years in issue, most of which were held jointly by William and Marie Purificato.

In 1981, William and Marie acquired CD's in the amount of $50,000. In 1982, they deposited at least $40,000 in a savings account. While some of the CD's from the previous year were closed out in 1982, petitioners have not attempted to demonstrate that the $40,000 account opened in 1982 was opened with the proceeds of the closed CD's. In 1983, an account was opened with $73,452. Again, petitioners made no attempt to demonstrate that the 1983 deposits represented the

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[6] Catherine testified that she spent only $50 per year on clothing for herself.

[7] We note, however, that their personal living expenses during the 3-year period at issue exceeded their reported adjusted gross income for the same period.

proceeds of previously acquired CD's or savings accounts. All these accounts were held jointly in the names of William and Marie Purificato.[8] Therefore, over the 3 years in issue, Marie became joint owner of substantial accounts. Marie has not proven that she was unaware of these investments.[9] The amounts placed in these accounts greatly exceed the income reported by William and Marie Purificato during the years in issue, and the evidence in the record indicates that William and Marie's living expenses would have consumed all their reported income.

William did not testify at trial in support of Marie's position.[10] However, William did provide answers to respondent's interrogatories that were part of the parties' stipulation of facts. In answer to respondent's question about bank accounts in which he had an interest during the years in issue, William provided the previously described information concerning accounts and CD's. When Marie was asked the same question, she simply referred to William's response. In answer to respondent's question whether William made any other investments in stocks, bonds, or assets (other than the previously described accounts) during the years 1980 through 1985, William answered:

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[8] Two additional CD's were in William's name.

[9] During her direct testimony, she recalled going to the bank with her husband: "Well, my husband took me over the bank and we both had to sign a card, and it was CD's he got."

[10] There is no indication that William and Marie Purificato were divorced or separated at the time of trial.

> *Answer*: Petitioner Marie Purificato has purchased one $100 (face value) savings bond (Double E) which [has] been placed in trust for her grandchildren, for each month from 1982 through 1985.
>
> By way of further answer, after reasonable effort and inquiry, Petitioners are unable to locate the records necessary to completely answer Interrogatory Number 15.

When Marie was asked the same question, she simply referred to her husband's answer.

Given the magnitude of the amounts of income and tax at issue, we find William's and Marie's answers incompatible with Marie's argument that she has met her burden of proving that it would be inequitable to hold her liable for the agreed-upon tax. Based on the entire record, including the fact that substantial deposits were made to jointly held bank accounts and CD's, we find that Marie Purificato has failed to prove that she did not receive a significant benefit from the items omitted from income or the substantial understatement of income tax for the years in issue, and therefore, hold that she has not met her burden of proving that it would be inequitable to hold her liable for the deficiencies and additions to tax.

Petitioner Catherine Purificato has presented even less evidence in this vein. Catherine did not introduce any documentary evidence of her and John's living expenses during the years in issue.[11] Like Marie, Catherine testified that she led an austere lifestyle consistent

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[11] Catherine failed to produce any records of expenditures made by check and failed to produce records of expenditures made by credit card, despite acknowledging the existence of at least four credit cards in their joint names.

with the amounts of income reported for the years in issue. She also testified that in the 33 years she was married to John Purificato, she and her husband had never taken a vacation, never gone to the movies or the theater, and had never gone out to dinner. She testified that she spent $75 to $100 a week on food and $50 a year on clothing.

The record indicates that John and Catherine Purificato made a number of investments during the years in issue. In response to respondent's interrogatory to John Purificato asking him to identify his bank accounts during the years in issue, he indicated that he had two CD's and two Prudential Insurance Co. accounts in 1981;[12] five other CD's in 1982; and 500 shares of preferred stock in Public Service Electric & Gas Co. in 1983 plus a State Farm Life account. With the exception of the preferred stock, which John indicated was held in both his and Catherine's names, he failed to disclose the amounts of these investments or in whose name title was held.[13] John's response does not indicate that this is a complete list of accounts. After disclosing the above information,

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[12] John Purificato's response indicates that the Prudential accounts were owned during each of the years in issue.

[13] John Purificato's response indicates that the Public Service Electric & Gas Co. stock cost $33,533.15 in 1983. Catherine Purificato testified that the Public Service Electric & Gas Co. stock was purchased for the benefit of her mother with her mother's savings. However, she provided no corroboration, nor did she introduce any documentation indicating the source of these funds. Catherine testified that her parents' savings totaled approximately $54,000. She offered no explanation for the difference between the total amount of savings and the total amount of stock purchased.

his answer states: "By way of further answer, Petitioner, after reasonable effort and inquiry, is unable to find records to more fully answer interrogatory number 11."[14]

Catherine's response to respondent's interrogatory about her bank accounts simply refers to her husband's answer. She provided no additional evidence concerning bank accounts during the trial.

In response to respondent's interrogatory asking for information regarding other investments made during the years in issue, John Purificato simply referred to his previously described answer. Beyond that, his answer stated: "By way of further answer, petitioners, after reasonable effort, are unable to locate the records necessary to further answer Interrogatory #15." In response to the same question, Catherine Purificato answered: "Petitioner, Catherine Purificato personally made no investments. By way of further answer, see Petitioner John Purificato's response to Interrogatory number 15." Catherine Purificato offered no further evidence regarding her and her husband's investments. At trial she testified that she could not recall the amount of the CD's owned by her or John or whether she was a joint owner of the CD's.

Catherine Purificato has failed to present sufficient evidence for us to find that she did not significantly benefit from the items omitted from income or from her husband's substantial understatement of income tax.

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[14] John Purificato did not testify at trial. His answers to respondent's interrogatories were part of the stipulation of facts. There is no indication that John and Catherine were divorced or separated at the time of trial.

Therefore, she has failed to carry her burden of proving that it would be inequitable to hold her jointly liable for the tax deficiencies and additions thereto for the years in issue.

Petitioners introduced a great deal of evidence at trial that both Marie and Catherine Purificato experienced extensive family problems during the years in issue. This evidence was intended to demonstrate that Marie and Catherine Purificato did not know, or have reason to know, of the understatements of income tax. Because we hold that petitioners have not proven that it would be inequitable to hold Marie and Catherine Purificato jointly and severally liable with their husbands for the taxes and additions to tax in issue, we will not address whether they knew, or had reason to know, of the understatements.

Decisions will be entered for respondent.

Filed November 10, 1993

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 92-7659

WILLIAM AND MARIE PURIFICATO

v.

COMMISSIONER OF INTERNAL REVENUE SERVICE
(Tax Court No. 86-40369)

JOHN AND CATHERINE PURIFICATO

v.

COMMISSIONER OF INTERNAL REVENUE SERVICE
(Tax Court No. 86-40447)

William and Mary Purificato;
John and Catherine Purificato,
Appellants

ON APPEAL FROM THE DECISIONS OF
THE UNITED STATES TAX COURT

(Tax Court Nos. 86-40369 and 86-40447)

Argued: June 24, 1993

Before: BECKER, ALITO,
and ROTH, *Circuit Judges*

(Opinion Filed: November 10, 1993)

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OPINION OF THE COURT

ALITO, *Circuit Judge:*

This is an appeal from a decision of the United States Tax Court holding that Marie and Catherine Purificato are not entitled to relief under the so-called "innocent spouse" provision of the income tax laws, 26 U.S.C. § 6013(e), and that therefore each is jointly and severally liable with her husband for amounts due as a result of the understatement of taxes on their joint returns for 1981, 1982, and 1983. We affirm.

I.

Marie Purificato is married to William Purificato, and Catherine Purificato is married to William's brother John. William and John owned and operated Apollo Caterers, Inc., a Subchapter S corporation. For the years in question, each couple filed joint income tax returns claiming a share of operating losses that they claimed Apollo had experienced.[1] William and Marie's returns reported adjusted gross income for 1981, 1982, and 1983 in the amounts of $18,670, $19,838, and $14,694 respectively. For these same years, John and Catherine's returns reported adjusted gross income of $23,880, $25,064, and $27,396.

After an audit, the Commissioner of Internal Revenue determined that, contrary to the couples' returns, Apollo had actually made a profit in each of the years at issue, and that its total profit during the three-year period exceeded two million dollars. The Commissioner issued notices of deficiency asserting that both couples owed more than $500,000 in taxes, as well as additions to tax. Each couple subsequently petitioned the tax court for redetermination of the deficiencies. After negotiation, partial settlements were reached. For purposes of the pending cases, the amount of taxes and additions owed for each year was stipulated. The parties could not, however, come to an agreement on whether Marie and Catherine Purificato were jointly liable with their husbands or

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[1] Because Apollo was a Subchapter S corporation, its losses were passed through to its stockholders in proportion to their ownership interests. See 26 U.S.C. §§ 1361-68, 1371-79. John Purificato owned 51% of the stock of Apollo, and William owned the other 49%.

whether they were entitled to relief under the "innocent spouse" provision, 26 U.S.C. § 6013(e). The cases were then consolidated, and the tax court conducted a trial on the issue of "innocent spouse" relief.

After the trial, the tax court held that Marie and Catherine were not entitled to such relief. The court first stated that Marie and Catherine bore the burden of proving that all four of the elements set out in § 6013(e)(1)(A)(D) were satisfied. The court found that two of these elements (those contained in §§ 6013(e)(1)(A) and (B)) were met, and it declined to rule on another element (that contained in § 6013(e)(1)(C)). The tax court held, however, that neither Marie nor Catherine had satisfied the element set out in § 6013(e)(1)(D), which requires proof that "taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax. . . ." According to the court, one of the facts and circumstances that should be considered under this subsection is "whether a spouse significantly benefitted from the erroneous items." *Purificato v. Commissioner,* 64 T.C.M. (CCH) 942, 946 (1992). Based on the Purificatos' answers to interrogatories, the court found that both couples had acquired substantial joint assets during the years in question. The court also noted that neither couple had made a full disclosure of assets. In light of these facts, the court held that neither Marie nor Catherine had proven that she did not receive a significant benefit from the income omitted from the returns.

After the tax court entered its judgment, the Purificatos filed a notice of appeal.

II.

Under 26 U.S.C. § 6013(d)(3), a husband and wife who make a joint income tax return are jointly and severally liable for the full amount owed. *See also Stevens v. Commissioner*, 872 F.2d 1499, 1503 (11th Cir. 1989). The so-called "innocent spouse" provision, 26 U.S.C. § 6013(e), creates a limited exception to this rule. This provision states in pertinent part:

> Under regulations prescribed by the Secretary, if –
>
> (A) a joint return has been made under this section for a taxable year,
>
> (B) on such return there is a substantial understatement of tax attributable to grossly erroneous items of one spouse,
>
> (C) the other spouse establishes that in signing the return he or she did not know, and had no reason to know, that there was such substantial understatement, and
>
> (D) taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax for such taxable year attributable to such substantial understatement, then the other spouse shall be relieved of liability for tax (including interest, penalties, and other amounts) for such taxable year to the extent such liability is attributable to such substantial understatement.[2]

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[2] This version of the statute was adopted by Congress in 1984, but Congress specifically provided that it was to be applied to subsequent litigation concerning certain previous taxable years, including the years at issue in this case. Deficit

26 U.S.C. § 6013(e)(1). In order to qualify for relief under this provision, the claimant bears the burden of proving all four of the elements set out in subsections (A) to (D). *See, e.g., Stevens v. Commissioner*, 872 F.2d at 1504; *Purcell v. Commissioner*, 826 F.2d 470, 473 (6th Cir. 1987); *Ballard v. Commissioner*, 740 F.2d 659, 663 (8th Cir. 1984).

Subsection (D), the focus of the current appeal, does not expressly mention the importance of whether a claimant "significantly benefitted" from the understatement of tax, but the history of the "innocent spouse" provision supports the tax court's conclusion that this question should be considered in determining whether joint and several liability would be inequitable.[3] As originally enacted in 1971, the "innocent spouse" provision expressly required consideration of this question. The predecessor of what is now subsection (D) required proof that:

> *taking into account whether or not the other spouse significantly benefited directly or indirectly from the items omitted from gross income* and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax for such taxable year attributable to such omission.

Pub. L. No. 91-679, § 1, 84 Stat. 2063 (1971) (emphasis added). The relevant portion of the Senate Report stated,

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Reduction Act of 1984, Pub. L. No. 98-36, § 424(c)(1), 98 Stat. 494, 803 (1984).

[3] This view of 26 U.S.C. § 6013(e)(1)(D) has also been adopted by other courts of appeals. *See Cleavinger v. Commissioner*, 826 F.2d 1379, 1382 (4th Cir. 1987); *Estate of Krock v. Commissioner*, 93 T.C. 672, 678 (1989).

however, that a spouse's benefit or lack of benefit was not necessarily determinative, and the report added the following:

> Other factors which could also be taken into account, in appropriate situations, in determining whether it is inequitable to hold the spouse liable for the deficiency include the fact of whether the spouse in question is deserted or is divorced or separated.

S. Rep. No. 91-1537, 91st Cong., 2d Sess., 3, *reprinted in* 1970 U.S.C.C.A.N. 6089, 6092.

In 1984, the "innocent spouse" provision was amended to take its present form. Among other things, this amendment substituted the more general language that now appears in § 6013(e)(1)(D) ("taking into account all the facts and circumstances") for the more specific language that appeared in the 1971 version ("whether or not the other spouse significantly benefitted directly or indirectly from the items omitted from gross income and taking into account all other facts and circumstances"). The House Report explained:

> The bill does not specifically require that the determination of whether it would be inequitable to hold the innocent spouse liable include the consideration of whether such spouse benefitted from the erroneous item, but *that factor should continue to be taken into account.*

H.R. Rep. No. 98-432, Part II, 98th Cong., 2d Sess., 1502, *reprinted in* 1984 U.S.C.C.A.N. 697, 1143-44 (emphasis added).

III.

With this background in mind, we address the specific arguments raised in this appeal. We turn first to the appellants' contention that the tax court erred in finding that Marie and Catherine Purificato "significantly benefitted" from the omitted income.

A. As part of this argument, the appellants first suggest that the tax court erred as a matter of law in concluding that acquiring savings or other investment assets may constitute a significant benefit. The appellants seem to suggest that only present consumption can constitute such a benefit. We quickly reject this argument. It is inconsistent with the ordinary meaning of the term "significant benefit"; it is not supported by case law or any other authority of which we are aware; and, in relation to the income tax laws (which of course tax income not consumption), it simply does not make sense.

B. The appellants next contend that the tax court erred in calculating the value of the joint assets that they acquired. Since this argument is purely factual, we must apply the clearly erroneous standard of review, 26 U.S.C. § 7482(a)(1); *Commissioner v. Duberstein*, 363 U.S. 278, 291 (1960); *Demkowicz v. Commissioner*, 551 F.2d 929, 931 n.4 (3d Cir. 1977). The appellants fall far short of satisfying this standard.

1. We turn first to the evidence concerning Marie Purificato. The tax court found that William and Marie Purificato, as joint tenants, acquired $50,092.83 in certificates of deposit in 1981 and a $10,000 certificate of deposit in 1982. The tax court also found that they deposited $40,320 in a joint savings account in 1982 and $73,452

in another joint bank account in 1983. If these figures are added up, the joint assets acquired by William and Marie were $50,092.83 in 1981, $50,320 in 1982, and $73,452 in 1983 – for a total of $173,864.83.

The tax court also found that William and Marie failed to prove that they did not acquire additional assets. William responded as follows to an interrogatory concerning their assets:

> [Question] 15. During the period 1980 through 1985, did you make any investments in stocks, bonds, or any other assets not described elsewhere herein. If so, specify the assets, amount and date of purchase, the name of any co-owner thereof or the name of any person in whose name title or ownership was taken, and the name of the broker, investment advisor or bank involved.
>
> Answer: Petitioner Marie Purificato has purchased one $100 (face value) savings bonds (Double E) which have [sic] been placed in trust for her grandchildren, for each month from 1982 through 1985.
>
> *By way of further answer, after reasonable effort and inquiry, Petitioners are unable to locate the records necessary to completely answer Interrogatory Number 15.* App. at 232-33 (emphasis added).

Marie Purificato's response to an identically worded inquiry read: "Please see response of William Purificato to interrogatory #15." App. at 252. These responses clearly leave open the possibility that William and/or Marie acquired additional assets worth substantial amounts.

On appeal, William and Marie argue that they actually acquired no more than $100,000 in joint assets during the period in question. They contend that the tax court double-counted some funds because it failed to recognize that these funds had been transferred from one certificate of deposit or account to another. In support of this contention, they ask us to draw inferences based on the assumption that the assets they did disclose were the only assets that they owned or acquired during the years in question.[4] But since William and Marie were unable or unwilling to state under penalty of perjury that they did not own other assets, we refuse to proceed on the basis of this assumption. William and Marie also ask us to draw other inferences that, even if consistent with the record, are hardly compelled by it.[5] Accordingly, we cannot hold that the tax court's calculations were clearly erroneous. Moreover, even if the appellants' own figure of $100,000 in joint assets acquired from 1981 to 1983 were correct.

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[4] For example, William and Marie note that the sum of the assets they disclosed as having held in 1983 was less than the corresponding figure for 1982. They then argue that the assets acquired in 1983 must have been paid for using assets held in 1982. *See* Appellants' Br. at 33.

[5] For example, William and Marie ask us to infer that the $40,320 savings account deposit in 1982 occurred near the end of the year, because the total annual interest on this account was small. They then ask us to infer that the $40,320 came from some of the certificates of deposit acquired in 1981, since these certificates were closed near the end of 1982. Appellants' Br. at 32. Clearly, however, there are other possible explanations for these events, particularly given William and Marie's failure to make a complete disclosure of their assets.

Marie Purificato's share of that sum would still constitute a significant benefit.

2. We now turn to the evidence concerning John and Catherine Purificato, whose disclosure of assets was even less complete then [sic] that of William and Marie. The tax court found that in 1983 John and Catherine acquired 500 shares of Public Service Electric & Gas preferred stock for approximately $33,500. Their answers to interrogatories also disclosed that they had acquired seven certificates of deposit in 1981 and 1982, but these answers did not reveal whether title was held by John alone or by John and Catherine jointly. In response to interrogatory number 15, which was quoted above, John and Catherine stated as follows:

> By way of further answer, Petitioners, after reasonable effort, are unable to locate the records necessary to further answer Interrogatory No. 15.

App. at 263. As previously noted, this type of answer leaves open the possibility that one or both spouses held additional assets of significant value. Thus, in light of the assets that John and Catherine did disclose, and in light of their failure to make complete disclosure of their assets, we hold that the tax court did not commit clear error in finding that Catherine Purificato failed to prove that she did not derive significant benefit from the omitted income.

IV.

A. The appellants contend that, even if Marie and Catherine derived significant benefit from the omitted

income, they were nevertheless entitled to "innocent spouse" relief. The appellants argue that other "facts and circumstances" were sufficient to satisfy § 6013(e)(1)(D). These additional facts and circumstances may be separated into the following three categories: (1) what the appellants term "the wives' meager lifestyles," (2) what the appellants describe as "the gut-[w]renching family tragedies" that Marie and Catherine had suffered, and (3) Marie and Catherine's alleged "lack of knowledge or reason to know of the omitted income." Appellants' Br. at 24.

In order to determine whether § 6013(e)(1)(D) requires consideration of facts and circumstances such as these, we begin with the statutory language. We note that this language does not require that weight be given to every personal fact and circumstance that a taxpayer chooses to adduce. Rather, the statute requires a determination whether, in light of all the facts and circumstances, "it is inequitable to hold the other spouse liable for the deficiency." Accordingly, § 6013(e)(1)(D) expressly requires that weight be given to only those facts and circumstances that have a rational bearing on a putatively "innocent spouse's" liability for the deficiency. By clear implication, the statutory language permits all other facts and circumstances to be disregarded.

The evolution and legislative history of § 6013(e) are fully consistent with this interpretation. As noted, the provision's legislative history strongly suggests that the following "facts and circumstances" should be considered under what is now § 6013(e)(1)(D): whether the supposedly "innocent spouse" significantly benefitted

from omitted income,[6] and whether that spouse "is deserted or is divorced or separated."[7] All of these facts and circumstances have a clear and rational relationship to the question whether it would be inequitable to hold a spouse liable. If a spouse benefitted from the omitted income, equity may weigh in favor of requiring the spouse to pay the tax and additions attributable to the omitted income. On the other hand, if the spouse did not specifically benefit, was subsequently deserted, divorced, or separated, and would have to pay the tax and additions from his or her own assets, equity may weigh in favor of relief. Thus, the evolution and legislative history of § 6013(e)(1)(D) support the conclusion that the "facts and circumstances" that must be considered are those having a rational bearing on whether a putatively "innocent spouse" should be held liable for taxes and additions due.

B. In light of this understanding of 26 U.S.C. § 6013(e)(1)(D), we consider the three categories of facts and circumstances that the appellants contend the tax court improperly failed to consider.

1. As previously noted, the first category concerns what the appellants term "the wives' meager lifestyle." Appellants' Br. at 24. The appellants' brief sums up this lifestyle as follows: "No dinners, no theater, no movies, no ballgames, no vacations, no furs, no jewelry, no nice cars, etc." Appellants' Br. at 30.

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[6] See H.R. Rep. No. 98-432, *supra*, at 1502, 1984 U.S.C.C.A.N. at 1143-44.

[7] S. Rep. No. 91-1537, *supra*, at 3, 1970 U.S.C.C.A.N. at 6092.

We believe that evidence of a spouse's modest or "meager" lifestyle may be relevant in determining whether the spouse significantly benefitted from omitted income – the topic previously discussed in part III of this opinion.[8] Such evidence may also be relevant in determining whether the spouse knew or had reason to know of omitted income – which is discussed below in part IV B 3 of this opinion. Such evidence, however, is not otherwise relevant in determining whether a taxpayer is entitled to "innocent spouse" relief. If a spouse benefits from the omitted income by accumulating assets from which tax deficiencies may later be paid but leads a modest or "meager" lifestyle, it is not inequitable to hold that spouse liable for the deficiencies. The income tax laws, as noted, tax income, not consumption, and thus a "meager lifestyle" is not per se relevant in this context.

Furthermore, we cannot believe that Congress, in enacting § 6013(e)(1)(D), intended to require the kind of investigations and trials that would be needed if entitlement to "innocent spouse" relief depended on facts and circumstances of this type. For example, we do not think that Congress wanted to require the Internal Revenue Service to investigate whether the Purificato couples ever went out to dinner, to the movies, or to a ballgame. Nor do we think that Congress wanted to require the tax court to conduct a trial and make findings on such questions.

2. The second category of facts and circumstances on which the appellants rely concerns what they describe

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[8] As noted, however, the acquisition of investment assets may also constitute a significant benefit. *See* typescript at 6.

as the "personal tragedies" that Marie and Catherine suffered. The appellants' brief recounts at length and in considerable detail Marie and Catherine's trial testimony about these matters. *See* Appellants' Br. at 11-20. In this testimony, Marie and Catherine stated, among other things, that some of their children had committed crimes, used drugs, and experienced other very serious personal problems. They also testified that their own parents and their husbands' parents had been seriously ill and had required considerable care. In addition, Marie testified that her husband was an alcoholic, gambled heavily, and physically abused her.

While the facts and circumstances related by Marie and Catherine evoke our sympathy, these facts and circumstances have no rational bearing on whether it would be inequitable to hold them liable for the taxes and additions due on the joint returns they signed. The income tax laws do not as a general rule provide that those who have experienced unhappiness, tragedy, or abuse at the hands of family members may pay less tax than other people in identical financial circumstances who have experienced happiness, good fortune, and considerate treatment by their families. Given that these facts and circumstances are generally deemed irrelevant for purposes of tax liability, we see no reason why they should not be viewed in the same manner in the particular context presented here. Furthermore, as stated above in connection with the first category of facts and circumstances noted by the appellants, we do not believe that Congress intended to require investigations and trials delving into such intensely private, non-financial matters.

3. The final category of facts and circumstances concerns Marie and Catherine's alleged lack of knowledge or reason to know about the omitted income. As previously noted, a taxpayer seeking relief under § 6013(e)(1) must prove four statutory elements, and one of those elements, which is set out in subsection (C), is that the taxpayer "did not know, and had no reason to know" that the return substantially understated the tax due. Thus, the appellants argue in effect that Marie and Catherine's alleged lack of knowledge or reason to know about the omitted income should count in their favor twice – both under subsection (C) and subsection (D).

We need not and do not reach the question whether actual or constructive knowledge can ever be considered under subsection (D). For present purposes, it is enough to hold that a taxpayer seeking "innocent spouse" relief may not satisfy subsection (D) based *solely* on lack of actual or constructive knowledge, for otherwise subsection (D) would be wholly superfluous. Here, Marie and Catherine failed to adduce any other relevant evidence with respect to subsection (D). Thus, even if they could show lack of actual or constructive knowledge, they could not satisfy subsection (D).

V.

Marie Purificato makes an additional argument. She contends that the record shows at most that she derived a significant benefit from only part of her husband's unreported income, and she argues that she should therefore be jointly liable for no more than the amount of unpaid

tax and additions attributable to the portion of the unreported income from which she benefitted.

This argument is based on the Fourth Circuit's decision in *Ratana v. Commissioner*, 662 F.2d 220 (1981). There, a wife seeking "innocent spouse" relief established that she lacked actual or constructive knowledge of most of her husband's unreported income, and the Commissioner conceded both that the wife had received no significant benefit from this portion of the income, and that the equities favored "innocent spouse" relief. *Id.* at 224. Under these circumstances, the Fourth Circuit held that the wife was jointly liable for the tax attributable to the unreported income of which she had actual or constructive knowledge but that she was entitled to "innocent spouse" relief as to the balance of the unreported income. *Id.* at 225.B [sic]

We do not reach the question whether we would follow *Ratana* if presented with a factually similar case. We find the current case factually distinct from *Ratana* because Marie Purificato did not prove that she derived a significant benefit from only part of the unreported income. As we have already observed, Marie Purificato and her husband failed to establish that they did not acquire substantial undisclosed assets. Under these circumstances, we do not think that *Ratana* is or should be applicable.

VI.

For the reasons explained above, the decision of the tax court is affirmed.

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Teste:

Clerk of the United States Court of Appeals
For the Third Circuit